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/ Texas Department of Transportation

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Opinion Committee

September 1, 1995

FILE # LL-35764-95

I.D. # 35764

The Honorable Dan Morales
Attorney General of Texas
Price Daniel Building
Austin, Texas 78701

> RE: New Ch. 232, Texas Family Code; as
> Added by H.B. 433 and H.B. 1863,
> 74th Legislature, 1995

Dear General Morales:

We ask, pursuant to Ch. 402, Texas Government Code, Subchapter C, that your Office issue an Attorney General Opinion as to certain questions raised herein. First, it seems appropriate to discuss, briefly, the elements of H.B. 433 and H.B. 1863 (hereinafter the Bills) which give rise to our queries.

In both Bills (see attached) certain state agencies are directed to suspend a "License" issued by the agency to a person who is delinquent in the payment of child support. These state agencies ("Licensing Authorities") are defined in the Bills, and later a list of the "licensing authorities subject to (the Bills)" is provided in the legislation. Finally, note that H.B. 433, at §84, provides, by adding to the provisions of §231.303 of the Family Code, that "each licensing authority shall request and each applicant for a license shall provide the applicant's social security number."

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Our queries are related to functions involving the Texas Department of Transportation (TxDOT). The queries, with comment and applicable citations are set out below.

I.
Social Security Numbers

What if an "applicant" for a license does not have a social security number? See, reference to H.B. 433. *supra*. TxDOT knows of no state law which confers the power to require a state resident to procure a social security number. Arguably, federal law may confer such a prescription for certain purposes. See, 42 USC §405. But that same statute provides that states "may . . . utilize" social security numbers in the administration of certain laws or programs (emphasis added). See, 42USC §405(c)(2A)(C)(I). No mention is made of a state's power to

compel the production, much less the procurement, of a social security number. Furthermore, the Bills in question do not purport to confer such authority.

Therefore, in the case, say, of a foreign student temporarily in residence, what should a state agency, such as TxDOT, do in an instance where some sort of license may be sought, but the applicant does not have a social security number. Assuming the individual in question is otherwise qualified to receive such license from the state, may the individual be refused solely on the basis that he possesses no social security number; or is the license to be granted? Surely this issue will be of importance to other state agencies as well.

II.
State Agencies Covered by the Bills

As was pointed out above, and as can be seen from the attached copies of the Bills, the "Licensing authority" is first given a cursory definition. Then an entire section of new Ch. 232 of the Family Code is devoted to an extensive list of "Licensing Authorities Subject to Subchapter." Our question is: Is the list dispositive or is the list only, in fact, a partial listing of affected agencies, to be supplemented by an interpretation of the term "Licensing Authority?"

This is of direct importance to TxDOT. New §232.002 includes the "Texas Transportation Commission" at sub (49). The Texas Department of Transportation is not listed. Also not listed is the Texas Motor Vehicle Commission or Texas Motor Vehicle Board. This organization, while now part of TxDOT, retains its own independent Board and name. See, TEX. REV. CIV. STAT. ANN., art. 4413(36). To be more specific our question is: Does new Ch. 232 of the Family Code cover and affect TxDOT and the Texas Motor Vehicle Commission/Texas Motor Vehicle Board?

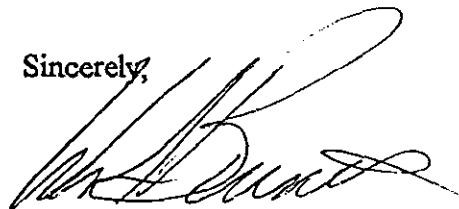## III.
Functions Affected by New Ch. 232 Texas Family Code

A. First, referring to Art. 4413(36), *supra*, and the Texas Motor Vehicle Commission, do vehicle dealers' licenses issued under that statute come within the purview of new Ch. 232?

B. Are the qualification letters allowing pre(bid)-qualification to contractors granted by TxDOT under 43 TAC §9.12 within the purview of Ch. 232?

C. Are the permits which TxDOT issues related to signs along roadways pursuant to TEX. REV. CIV. STAT. ANN., art. 6674V-3 covered by Ch. 232? See, also, TEX. REV. CIV. STAT. ANN., art. 4477-9a.

D. Are the licenses now to be issued by TxDOT under TEX. REV. CIV. STAT. ANN., art. 6687-9a (see, S.B. 3, 74th Legislature, Regular Session) covered by Ch. 232?

E. Are the permits issued by TxDOT under the new TEX. REV. CIV. STAT. ANN., art. 6675c (see, S.B. 3, 74th Legislature, Regular Session) covered by Ch. 232?

F. Are vehicle title registration (TEX. REV. CIV. STAT. ANN., art. 6687-1) and the license plate requirements (TEX. REV. CIV. STAT. ANN., art. 6675a, et seq) subject to the requirements of Ch. 232? May vehicle titles and vehicle license plates be refused or revoked under the strictures of Ch. 232?

G. It is the responsibility of TxDOT to issue certain permits for the operation of certain "heavy" vehicles on Texas highways. See, TEX. REV. CIV. STAT. ANN., art. 6701a. Are these permits to be denied or revoked under the strictures of Ch. 232?

H. Pursuant to TEX. REV. CIV. STAT. ANN., art. 6669c, TxDOT has "establish(ed) a disadvantaged business program." As part of this program, TxDOT certifies certain businesses as "disadvantaged businesses." Are these certifications subject to the strictures of Ch. 232?

We realize that this is an extensive request. We will of course be happy to furnish you with any additional information or input you feel would be helpful. In this regard, please feel free to call upon our General Counsel, Mr. Robert E. Shaddock, or his Deputy, Mr. Richard D. Monroe. They may be reached at the above address or by telephone at 463-8630. I will be happy to render any assistance I can in this matter. We thank you for your assistance in this matter.

Sincerely,

Wm. G. Burnett, P.E.
Executive Director

Attachments

cc: Texas Transportation Commission